

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 OSP 02124

JUDITH KNECHTEGES,)	
)	
Petitioner,)	
)	
v.)	MOTION TO DISMISS
)	<i>(Res Judicata)</i>
)	
NC DEPARTMENT OF PUBLIC)	
SAFETY,)	
Respondent.)	
)	

NOW COMES Respondent North Carolina Department of Public Safety (hereinafter, “The Department”), by and through counsel, Assistant Attorney General Norlan Graves and files this Motion to Dismiss the claim regarding priority consideration. In support of this motion, the Department shows unto the Court the following:

STATEMENT OF RELEVANT FACTS

1. Petitioner filed this Contested Case Petition on February 22, 2019, alleging that the Department did not provide her with promotional priority and that they retaliated against her in violation of the Whistleblower Act, N.C.G.S. Chapter 126, Article 14, when they did not hire her for the CEO Position. (ex. 1)
2. On July 29, 2019, Respondent filed a Motion for Summary Judgement which was granted in part by the Honorable Melissa Owens Lassiter, Administrative Law Judge on September 11, 2019. (ex. 2)
3. Judge Lassiter’s ordered granted summary judgement on the issue of priority consideration, leaving the whistleblower/retaliation claim for hearing. (ex. 3)

4. On October 1, 2019, Petitioner voluntarily dismissed the contested case without prejudice. (ex. 4)
5. On May 28, 2020, Petitioner re-filed a Petition for Contested Case, raising both issues from the February 22, 2019, filing. (ex. 5)

ARGUMENT

Petitioner's claim regarding priority consideration is barred by the doctrine of *res judicata*. *Res judicata* applies "where the second action between two parties is upon the same claim." Bockweg v. Anderson, 333 N.C. 486, 492, 428 S.E.2d 157, 161 (1993). "The prior judgment serves as a bar to the relitigation of all matters that were or should have been adjudicated in the prior action." Id. To prove *res judicata*, a party must show "(1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits." Moody v. Able Outdoor, Inc., 169 N.C. App. 80, 84, 609 S.E.2d 259, 262 (2005).

Here, there was a final judgement on the merits regarding the issue of priority consideration in the form of Judge Lassiter's September 11, 2019, order. Regarding the cause of action, Petitioner stated the exact same causes of action in the instant case as in the original filing. Additionally, the parties are the same parties in the instant case and the original.

WHEREFORE, the Department respectfully requests that the Court grant its Motion to Dismiss Petitioner's claim regarding priority consideration.

This the 19th day of August, 2020.

JOSHUA H. STEIN
ATTORNEY GENERAL

s/Norlan Graves

Norlan Graves

Assistant Attorney General

N.C. State Bar No. 39709

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CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing **Motion to Dismiss** on Petitioner by utilizing the Court's e-filing system, which will give electronic notice to the following attorney of record:

Jennifer J. Knox
4600 Marriott Drive
Suite 200
Raleigh, NC 27612
Attorney for Petitioner

This the 19th day of August, 2020.

s/Norlan Graves
Norlan Graves
Assistant Attorney General